

IN THE SUPREME COURT OF THE YUKON TERRITORY

Citation: *R. v. Asp*, 2005 YKSC 58

Date: 20051104
Docket No.: S.C. No. 04-01527A
Registry: Whitehorse

Between:

HER MAJESTY THE QUEEN

And

CHRISTINA MARIE ASP

Before: Mr. Justice R.S. Veale

Appearances:

Mike Cozens and

Melissa Atkinson

Edward J. Horembala, Q.C.

Counsel for Her Majesty the Queen

Counsel for Christina Marie Asp

REASONS FOR JUDGMENT (SENTENCING)

INTRODUCTION

[1] On February 21, 2004, Christina Asp stabbed Keith Blanchard in the chest with a 13-inch butcher knife. The blade penetrated to a depth of 6 inches. Christina Asp pled guilty to manslaughter. The issues are the length of sentence to be imposed considering the principles set out in *R. v. Gladue*, [1991] 1 S.C. R. 688 and the amount of credit to be given for pre-sentence custody.

FACTS

[2] Crown and defence counsel filed an Agreed Statement of Facts. The following is a summary.

[3] Keith Blanchard and Christina Asp had an on-again/off-again relationship for approximately four years. The relationship was volatile and marked by excessive consumption of alcohol, arguments and verbal abuse to each other, often over issues related to jealousy. The Pre-Sentence Report indicates that the relationship covered a period of years from 1999 to 2004. Ms. Asp stated that they lived with Keith Blanchard's parents from 2000 to 2004. I find it to be a common-law relationship.

[4] In 2001, Keith Blanchard had been charged in relation to allegations of assaultive behaviour against Christina Asp. He was never convicted.

[5] There were also allegations in RCMP Occurrence Reports of assaultive behaviour by Christina Asp towards Keith Blanchard. She was never charged for an offence of violence against Keith Blanchard.

[6] The stabbing occurred on February 21, 2004, shortly before 9:41 p.m. at a residence in Pelly Crossing, Yukon.

[7] A number of people had been drinking alcohol at the residence during the day and evening.

[8] Christina Asp and Keith Blanchard had an argument in the late afternoon in one of the bedrooms. That evening, before 9:41 p.m. when the RCMP were called, Christina Asp was observed to be crying in one of the bedrooms. Keith Blanchard was standing beside the wood stove in the central area of the residence. A further verbal altercation took place between Keith Blanchard and Christina Asp. It ended by Christina Asp

grabbing a 13-inch butcher knife and stabbing Keith Blanchard in the chest to a depth of 6 inches. Following that, Christina Asp ran back to the bedroom. A short time later, she asked for an ambulance to be called. She also applied pressure to the chest wound and said "Hold on Keith, I still love you. I'm sorry."

[9] When the RCMP arrived at 9:46 p.m., Keith Blanchard was still alive. He died in the ambulance at 12:55 a.m. on the way to the hospital in Mayo.

[10] The blood alcohol level of Christina Asp at the time of the stabbing was between 215 mg % and 230 mg %. Keith Blanchard had a blood alcohol level of 281 mg % at the time of his death.

[11] It was agreed by counsel that the guilty plea to manslaughter was early as opposed to last minute.

CIRCUMSTANCES OF CHRISTINA ASP

[12] A very comprehensive Pre-Sentence Report was prepared by the Probation Officer.

[13] Christina Asp is a twenty-seven-year-old First Nation woman. She had a fairly normal upbringing by her mother and adoptive father until the age of twelve. However, there were traumatic instances of sexual abuse during her childhood by older male relatives and friends of the family.

[14] Her life changed dramatically at the age twelve, when she learned that her adoptive father was not her natural father. She started running away and living a street life of panhandling and stealing. She began to hang around teenagers from troubled homes who had no rules. She abused drugs and exchanged sex for drugs, alcohol, food and shelter. She was living in a common-law relationship by age fifteen. She had

suicidal tendencies and was bulimic. She had a lifestyle where she always had a boyfriend and “sugar daddies” on the side to support her. She continues to be suicidal from time to time.

[15] Christina has been cooperative in the preparation of the Pre-Sentence Report. She has shown genuine remorse and cries when she talks about Keith Blanchard. She wrote a very apologetic letter to his mother, sisters and brother asking for, but not expecting, their forgiveness. It was read aloud in court by her counsel, as she was too emotional to read it. She also sent a letter of apology to Keith Blanchard's mother on March 31, 2004, shortly after the killing. At the same time, she realizes that she needs help to rehabilitate herself and that a federal penitentiary sentence may provide the programs she needs. Her Probation Officer gave her information about the federal programs for women offenders.

[16] The Probation Officer recommends a penitentiary term of imprisonment as the federal system has the programming to help her change what has become a very entrenched destructive lifestyle.

[17] Christina Asp has been convicted of only one adult offence for assault in 1998. She received a suspended sentence and probation of six months. Her LSI-R risk assessment places her in the moderate category.

VICTIM IMPACT STATEMENTS

[18] A number of victim impact statements were filed by Keith Blanchard's mother, sisters and extended family. The statements of Keith Blanchard's immediate family were read out in court. They expressed the hurt that his mother, sisters and brother have felt.

[19] In particular, his mother Caroline told us about the eldest son she misses so much in these words:

“I miss his jokes, his laughter, humour and the love and care he showed to his family and relatives. He especially loved his nephews, he loved kids. He was easy to talk to and always listened to what people say. He just knew how to make people laugh and feel comfortable. He got along with everyone he met, even if he didn't know them. He would not hesitate to help people out even if not asked.”

THE LAW OF SENTENCING

[20] The fundamental purpose of sentencing is to achieve one or more of the objectives of denunciation of the unlawful conduct, deterrence of offenders and others, separation of offenders where necessary, rehabilitation of offenders, making reparation for the harm done to the community and the promotion of a sense of responsibility in offenders.

[21] Sentences are increased or decreased to take into account aggravating and mitigating circumstances.

[22] The Parliament of Canada has directed judges to take into consideration all available sanctions other than imprisonment that are reasonable in the circumstances, with particular attention to the circumstances of aboriginal offenders.

[23] It was not suggested by counsel and I do not find that a conditional sentence to be served in the community is appropriate. It would not be consistent with the principles of denunciation of the crime and deterrence to the offender and others.

[24] However, the principles set out in *R. v. Gladue*, as summarized in paragraph 93 of that decision, must still be considered. *R. v. Gladue*, as it interprets section 718.2 (e) of the *Criminal Code*, requires judges to undertake the sentencing of aboriginal

offenders individually but also differently because the circumstances of aboriginal people are unique. The Pre-Sentence Report in this case has provided this information for Christina Asp.

[25] Even where there is no alternative to incarceration, the length of the term must be carefully considered. Although a jail sentence for an aboriginal person may be less than for a non-aboriginal offender, the *Gladue* case stated at paragraph 93 (13):

“It is unreasonable to assume that aboriginal peoples do not believe in the importance of traditional sentencing goals such as deterrence, denunciation, and separation, where warranted. In this context, generally, the more serious and violent the crime, the more likely it will be as a practical matter that the terms of imprisonment will be the same for similar offences and offenders, whether the offender is aboriginal or non-aboriginal.”

[26] A conviction for First Degree Murder, which is planned and deliberate, is distinguished from a conviction for Second Degree Murder, which is a homicide with the intent to kill a person. Both require a life sentence. The only sentencing difference between the two is the length of time the convicted person is incarcerated before being eligible for parole.

[27] In a manslaughter conviction, the offender has caused the death of a person but without the intention to kill the person. Depending upon the circumstances and differing degrees of moral culpability, sentences for manslaughter can range from a suspended sentence to life imprisonment.

[28] As set out in *R. v. K.K.L.*, [1995] A.J. No. 434, the unlawful act must be considered both objectively and subjectively in determining whether it would subject the victim to a life-threatening injury. At paragraph 23, Fraser C.J.A. of the Alberta Court of Appeal listed other considerations:

“These include the choice of weapon used to effect the unlawful act, the degree of force the offender used in perpetrating the act, the extent of the victim's injuries, the degree of violence or brutality, the existence of any additional gratuitous violence, the degree of deliberation involved in the act, the extent to which the act reflected forethought of action or planning, the complexity of the act, what, if anything, provoked the act, the time taken to perpetrate the act and the element of chance involved in the resulting death.”

[29] In the case of Christina Asp, the Crown has submitted that a range of six years is appropriate. The defence submits four years is appropriate. The pre-sentence custody of Christina Asp must then be credited to determine the actual sentence I will impose.

THE SENTENCE

Pre-Sentence Custody

[30] Pre-sentence custody is not intended to be punishment but it will be deemed to be part of the offender's sentence following conviction. In *R. v. Wust*, 2000 SCC 18, the Supreme Court of Canada stated that there was no mechanical formula for crediting pre-sentence custody.

[31] Counsel agree that the credit would be 1.5 to 1 if it were solely to reflect the fact that pre-sentence custody does not receive the statutory remission contained in the *Corrections and Conditional Release Act*, 1992 c. 20.

[32] The ratio of more or less than 2 for 1 is applied where there is some harshness in the pre-sentence custody. It may arise from the physical conditions or the absence of rehabilitative programs. The use of lock-down time or the requirement of administrative segregation may also be considered. Where the segregation is requested by the inmate or for the protection of the inmate, there may be no additional credit to the basic 1.5 to 1 ratio. Where segregation is required because the inmate has a high security rating or

because of the conduct of the inmate, there may be no additional credit. Each case must be considered on its own particular circumstances.

[33] Generally speaking, there is no differential treatment of remand prisoners who are waiting for their trial and those serving a sentence. All programs are available to remand prisoners with some exceptions primarily applicable to female inmates. For example, female inmates cannot work in the kitchen or laundry, as there are generally an insufficient number of female inmates to provide the service without involving male inmates. Female inmates are not allowed to attend the Narcotics/Alcohol Anonymous programs, which was a decision of the volunteers who provide the program. However, there is a female counsellor, albeit on a contract basis. Female inmates receive daily fresh air and exercise in the gym. Although female inmates are not locked down, they are not moved about on a daily basis as much as male inmates, because of their small numbers. Movement within the Whitehorse Correctional Centre is stopped for females when males are moved and vice-versa. Male and female inmates are separated for the safety of the women and to avoid inappropriate conduct between male and female inmates. There is no evidence that the dormitory for female inmates is harsher than the dormitory for male inmates.

[34] Remand prisoners are not eligible for unescorted temporary absences and they may not be able to participate in programs that are offered to sentenced inmates outside the Whitehorse Correctional Centre.

[35] The segregation units are used for several purposes. Segregation unit 1 is the most punitive with only a bed and a toilet. It is used for punishment and security.

Segregation unit 2 is more comfortable than unit 1 as it has its own washroom facilities

and television. It tends to be used for protective and incompatibility purposes.

Segregation unit 3 and the medical dorm have washroom facilities, television and are generally more comfortable than units 1 and 2. The medical dorm, when it is not in use for medical purposes, may be used for protective and incompatibility purposes.

The Pre-Sentence Custody of Christina Asp

[36] The pre-sentence custody of Christina Asp is 417 days. She was charged on February 22, 2004, and held in the Whitehorse Correctional Centre until June 16, 2004, when she was released to the Yukon Adult Resource Centre. On June 30, 2004, she was given permission to move into her own apartment. She remained there until she was arrested for intoxication and returned to the Whitehorse Correctional Centre on September 24, 2004.

[37] She was released again on February 23, 2005, until June 10 when she was intoxicated and returned to the Whitehorse Correctional Centre until this sentencing.

[38] For most of her time at the Whitehorse Correctional Centre, she has been in the women's dorm except for brief periods in the medical dorm or in segregation unit 3.

[39] Christina Asp attended the school program and worked at the Resource Centre after hours. She took the Violence Prevention program and the Substance Management program. She was also employed as the librarian/resource cleaner. She was denied the tanning course as it was delivered outside the Whitehorse Correctional Centre. Some programs simply were not available at the times she was in custody. She agreed with the Probation Officer that she was treated the same as a female inmate sentenced at the Whitehorse Correctional Centre.

[40] Christina Asp has had access to programming and employment. She has had a minimal amount of segregation at her request or because of suicide watch.

[41] I find the appropriate credit for pre-sentence custody should be a ratio of 1.7 to 1 primarily because Ms. Asp was not able to receive the Narcotics/Alcohol Anonymous program, a most vital support program for her circumstances. This results in a credit of 709 days which I will treat as 24 months for ease of calculation.

The Length of Sentence

[42] As stated earlier, the range of manslaughter sentences is from a suspended sentence to life imprisonment. Such a wide range of sentences results from the wide and differing circumstances that are presented.

[43] In *R. v. Klassen*, [1997] Y.J. No. 4 (S.C.) and on appeal [1997] Y.J. No. 37, seven years was found to be a fit and proper sentence in a case of spousal homicide. In that case, the offender strangled his spouse in her bed. He was convicted of manslaughter by a jury which indicates that he did not have an intent to kill as the result of a “deep and blind rage”. There were no drugs or alcohol involved. There was no evidence of prior violence. The offender attempted to plead guilty to manslaughter. He also showed “deep remorse”.

[44] The mitigating circumstances for Christina Asp are:

1. she was immediately remorseful and tried to assist the victim;
2. she has been genuinely remorseful since Keith Blanchard's death as evidenced by two apology letters, the latter being read in court;
3. she has taken some responsibility both for the unlawful act and her own rehabilitation.

[45] The aggravating circumstances of Christina Asp's offence are:

1. she used a 13-inch butcher knife to stab Mr. Blanchard;
2. it took a significant degree of force to thrust the butcher knife six inches into his body;
3. the *Criminal Code* deems an offence against a common-law partner to be an aggravating circumstance.

[46] The Crown submitted that the intoxication of Christina Asp must be treated on balance as neither aggravating nor mitigating. In my view, Ms. Asp's intoxication level has an aggravating aspect to the extent that the killing may not have occurred had she not been so intoxicated. Needless to say, in the Yukon, intoxication and crime go hand in hand. Intoxication is a two-edged sword. On the one hand, it reduces the capacity to intend certain consequences which in this case has resulted in a manslaughter conviction rather than a murder conviction. But at the same time, it decreases the level of inhibition and results in intoxicated people committing senseless violent acts which, in this case, deprived Keith Blanchard of his life. On balance, I find the level of intoxication of Ms. Asp to be an aggravating circumstance in this sentencing context.

[47] Domestic violence is a serious problem in Yukon society and should be denounced in clear and unequivocal terms. Were it not for the particular circumstances of Christina Asp and the mitigating circumstances, I would consider that deterrence and denunciation would require a sentence of seven to eight years in the federal penitentiary.

[48] However, in this case there is evidence of prior assaultive behaviour on the part of both spouses towards each other. This fact means that the violence in this

relationship was not one-sided but rather indicative of a mutually destructive relationship. Although violence against a spouse is clearly an aggravating factor, it must be considered in the entire context of this violent relationship.

[49] I also recognize the responsibility that Christina Asp has shown in taking the courses that were available to her in pre-sentence custody and her willingness to access the programs in the federal penitentiary. However, her failure to maintain sobriety when released demonstrates the intensive programming she requires for her rehabilitation.

[50] Given Christina Asp's background, the violent nature of the relationship, her immediate and genuine remorse, her openness to rehabilitation and her early guilty plea, I find five years imprisonment to be a fit and proper sentence.

[51] Christina Asp, please stand.

[52] Applying a credit of two years for pre-sentence custody, I sentence you to three years imprisonment in a federal penitentiary.

[53] I order that you provide a DNA sample. The Victim of Crime surcharge is waived. You are prohibited from having in your possession any firearm, cross-bow, restricted weapon, ammunition or explosive substance for a period expiring ten years after your release from imprisonment. You are also prohibited from having in your possession any prohibited firearm, restricted firearm, prohibited weapon, prohibited device and prohibited ammunition for the remainder of your life.

VEALE J.